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18 CORY SPENCER, DIANA MILENA
19 REED, and COASTAL PROTECTION
20 RANGERS, INC.

21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

23 CORY SPENCER, an individual;
24 DIANA MILENA REED, an
25 individual; and COASTAL
26 PROTECTION RANGERS, INC., a
27 California non-profit public benefit
28 corporation,

Plaintiffs.

CASE NO. 2:16-cv-02129-SJO (RAOx)
**DECLARATION OF VICTOR OTTEN
RE: DEFENDANT BRANT
BLAKEMAN'S MOTION TO COMPEL
ANSWERS TO INTERROGATORIES**

1

v.

2
3 LUNADA BAY BOYS; THE
4 INDIVIDUAL MEMBERS OF THE
5 LUNADA BAY BOYS, including but
not limited to SANG LEE, BRANT
BLAKEMAN, ALAN JOHNSTON
6 AKA JALIAN JOHNSTON,
MICHAEL RAE PAPAYANS,
7 ANGELO FERRARA, FRANK
FERRARA, CHARLIE FERRARA,
9 and N. F.; CITY OF PALOS
10 VERDES ESTATES; CHIEF OF
POLICE JEFF KEPLEY, in his
11 representative capacity; and DOES
1-10,
12

13

Defendants.

14

15

I, Victor Otten, declare as follows:

16

1. I am attorney licensed to practice under the laws of the State of
California and am duly admitted to practice before this court. I am an
attorney of record for Plaintiffs Cory Spencer, Diana Milena Reed, and the
Coastal Protection Rangers, Inc. I have personal knowledge of the facts set
forth herein, and if called as a witness, I could and would competently testify
to the matters stated herein.

22

2. Defendant Blakeman served Plaintiffs with interrogatories on
September 16, 2016 by mail, propounded on Plaintiffs Cory Spencer, Diana
Milena Reed, and Coastal Protection Rangers, Inc.

25

3. Plaintiffs timely responded and objected to the discovery on
October 20, 2016. Among other raised objections, Plaintiffs objected to
Blakeman's interrogatories as premature because they seek or necessarily
rely upon a contention, and contention interrogatories need not be answered

1 until discovery is “substantially complete.” Fed. R. Civ. P. 33(a)(2).

2 4. On December 7, 2016, Defendant Blakeman filed a motion to
3 compel discovery responses. (Dkt. No. 150.)

4 5. On December 28, 2016, the Court issued a minute order that the
5 parties meet and confer further as to Defendant Blakeman’s motion to
6 compel discovery.

7 6. Pursuant to the Court’s order, counsel for Brant Blakeman
8 Richard P. Dieffenbach, Robert Cooper and John Worgul and I met and
9 conferred on January 4, 2017. While we disagreed on the law related to the
10 objections asserted by the plaintiffs, I agreed to supplement the
11 interrogatories with the information we learned via the class certification
12 motion without waving our objections. I told the attorneys that I would try to
13 supplement the responses by January 11, 2017.

14 7. Apparently at 6:19 p.m. on January 12, 2017, Defendant’s
15 counsel, Richard P. Dieffenbach, emailed the Defendant’s portion a Joint
16 Statement relating to Mr. Blakeman’s Motion to Compel **only** to myself.¹ Mr.
17 Dieffenbach failed to include the associate from my office working on the
18 case or any of the attorneys from my co-counsel’s office, Hansen Bridgett
19 LLP. As Mr. Dieffenbach had always included these people in email
20 correspondence in the past, this clearly was not an accidental oversight.²
21 Until Mr. Dieffenbach’s office filed the motion to compel, I had never seen
22 this email. There is no legitimate explanation for this; especially considering

23
24 ¹ A copy of Mr. Dieffenbach’s email is attached as **Exhibit “1”**.

25 ² Attached as **Exhibit “2”** is an email from Mr. Dieffenbach dated December
26 29, 2016 re Motion to Compel (Brant Blakeman) that he sent to various
27 people including my associate Kavita Tekchandan and my co-counsel Kurt
28 Franklin, Samantha Wolff and Jennifer Aniko Foldvary indicating that he
knew their email addresses.

1 Mr. Dieffenbach knows that I am a small law firm (two attorneys working pro
2 bono compared to the six attorneys billing for Blakemans defense) and was
3 preparing for a jury trial that was set to start on January 18, 2017.

4 8. On Thursday, January 13, 2017, Plaintiffs Cory Spencer and
5 Coastal Protection Rangers served supplemental responses to Defendant
6 Blakeman's interrogatories by mail. Monday, January 15, 2017, was a
7 federal holiday with no mail service.³ The responses are detailed and greatly
8 exceed anything any defendant has provided to the plaintiffs in this case.⁴

9 9. On January 17, 2017, following the long holiday weekend,
10 Defendant's counsel filed a Joint Stipulation to Motion to Compel Plaintiffs'
11 Responses to Discovery. They did this without ever calling to check the
12 status of the discovery- which had already been served. Moreover, they
13 knew that I was starting a jury trial the next day.

CLAIMS OF STONEWALLING

15 10. The claims of stonewalling by Mr. Blakeman's attorneys are
16 disappointing and untrue. The supplemental interrogatories have been
17 provided even though the interrogatories are improper. In addition, plaintiffs
18 provided thirty declarations from witness in support of their motion for class
19 certification. Importantly, the defendants are in the sole possession of much
20 of the information related to plaintiff's case which they refuse to produce.⁵
21 The plaintiffs have willingly turned over information as they have obtained it;

23 ³ Because of the holiday, I was having difficulty connecting with plaintiff
24 Diana Reed to review her responses. Accordingly, they were served by mail
25 on January 18, 2017.

26 ⁴ A copy of Mr. Spencer's response to Blakeman's interrogatories are
27 attached as **Exhibit “3.”** Because the response for Coastal Protection
Rangers and Diana Reed are duplicative, they are not being included.

²⁸ ⁵ Defendant Alan Johnston's cellphone is a good example.

1 usually in response to witnesses that learn about the lawsuit in the media
2 and come forward. The plaintiffs have supplemented their Fed. R. Civ. P.
3 26(a)(1) disclosures twice listing: 105 witnesses, numerous documents,
4 photographs and videos. In contrast, with the exception of the City of Palos
5 Verdes Estates, I do not believe that any defendant has disclosed any non-
6 party witnesses in their Fed. R. Civ. P. 26(a)(1) Initial Disclosures other
7 than the plaintiff's attorney Victor Otten. Mr. Blakeman listed two videos in
8 his disclosures, yet we have discovered that there are more.⁶

9 11. Brant Blakeman's Initial Disclosures signed by Richard P.
10 Dieffenbach on August 22, 2016, disclose the video that his client took of
11 Defendant Alan Johnston aka Jalian Johnston sexually harassing plaintiff
12 Diana Reed.⁷ Mr. Blakeman's attorneys, however, refused to turn the video
13 over until after the deposition of their client which took place on November
14 21, 2016.⁸ This was more than three months after the disclosures. In
15 addition, it appears the video was altered. Plaintiff will bring this video to the
16 hearing on this discovery motion should the Court wish to view it.

Defendant Alan Johnston's cellphone

18 12. On December 16, 2016, the Court issued an Order re Plaintiff
19 Cory Spencer's Motion to Compel Defendant Alan Johnston to Produce

22 ⁶ While this is the subject of a separate motion, attached as **Exhibit “4”** is a
23 photograph taken by a photographer for the Los Angeles Times showing
Defendant Blakeman videotaping Chris Taloa and several other people.

24 ⁷ A copy of Mr. Blakeman's Rule 26(A)(1) Initial Disclosures is attached as
25 **Exhibit "5."**

26 ⁸ Mr. Blakeman's attorneys improperly attempted to stop the deposition of
27 their client on the basis that they were entitled to discovery responses first
 and brought a protective order which was denied. See **Exhibit “6”**.

28 | (footnote continued)

1 Documents.⁹ Mr. Johnston and his attorney Pat Carey have failed to comply
 2 with several aspects of that Order. First, the Order states: "Mr. Johnston is
 3 ordered to cooperate as necessary with Mr. Stefan with respect to
 4 passwords." That did not happen. Mr. Carey never provided a working
 5 password.

6 13. On January 11, 2017, my co-counsel, Kurt Franklin, and I each
 7 received messages from Todd at Setec Investigations regarding the status
 8 of the investigation of Defendant Johnston's cellphone. First, we were
 9 informed that the phone had "enhanced security" turned on, which makes it
 10 encrypted and harder to access. We were told that over a period of time,
 11 Mr. Carey provided four passwords none of which worked. Eventually,
 12 Setec Investigations had to crack the phone using a crunching program.
 13 This took 5 or 6 hours running a computer program to get the password.
 14 Second, the phone was not water damaged as claimed by Defendant
 15 Johnston. Third, on January 10, 2017, Setec Investigations provided Mr.
 16 Carey a multi tab spreadsheet of the recovered information: (1) iChat (4,250
 17 messages going back to at least 3/12/15); (2) MMS text messages with
 18 photos or movies (133 texts with movies of photos going back as far as
 19 10/14); (3) SMS regular texts (2,516 regular texts going back to 12/14 of
 20 these 1,381 are deleted; about 1,384 are not blank – some contain
 21 gibberish, etc.); (4) no emails on the phone without iCloud access (but Setec
 22 can tell there have been 456 emails w/dates – the oldest went back 10/12);
 23 (5) call log [1,921]; (6) audio recordings (19); (7) videos and photos;
 24 contacts (2,445); (8) web history. The Order states that after Mr. Carey
 25 receives the information, he "shall designate the information formally copied

26

27

28

⁹ A copy of that Order is attached as **Exhibit "7"**.

1 and produced that is responsive to the Request for Production of
2 Documents. Then, Mr. Johnston may review the production and designate
3 information "CONFIDENTIAL" pursuant to the Court's Protective Order. This
4 designation shall take place within one (1) day of receipt of the designated
5 production. This has not happened. Fourth, Setec Investigations determined
6 that there is an icloud account associated with the phone and that it might
7 have back up data. Mr. Carey represented to the plaintiffs that there was not
8 an icould account.

9 14. There are numerous other examples of the defendants
10 withholding information from plaintiffs which need not be addressed here.
11 What is obvious is that plaintiffs have acted appropriately in all discovery
12 matters. What is also evident from the discovery proceedings to date is that
13 there is a clear pattern emerging that the individual defendants are
14 withholding and/or destroying evidence and misusing the discovery process.
15 Like the motion for protective order regarding Mr. Blakemans deposition that
16 came before, this was an unnecessary motion.

17 I declare under penalty of perjury under the laws of the State of
18 California that the foregoing is true and correct. Executed January 21, 2016,
19 in Torrance, California.

/s/ Victor Otten
Victor Otten